IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 324 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MEHSANA DIST.CO.OP. MILK PRODUCERS' UNION LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 324 of 1992
SERVED BY RPAD - (N) for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 19/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following questions have been referred for the opinion of this Court in respect of assessment year 1984-85 :-

(i) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that explanation 2 to Sec. 43 (1) was not applicable and that no depreciation and investment allowance on plant and machinery received in kind from Indian Dairy Corporation was allowable?

(ii) Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the contribution made to Gujarat Rajya Sahakari Education Fund as a statutory liability under Section 69 of the Gujarat Rajya Co.Op. Societies Act is not deductible as revenue expenditure u/s.28/37 of the I.T. Act ?

2. Though served, none appears for the applicant-assessee. We have heard Mr. M.R. Bhatt learned counsel for the revenue.

3. As far as question No.1 is concerned, Mr. Bhatt fairly points out that the controversy raised herein is concluded in favour of the assessee by the decision dated 24-12-1999 in I.T.R. No.290 of 1984 between the same parties.

We accordingly answer the question in the negative i.e. in favour of the assessee and against the revenue.

4. Coming to question No.2, here also, Mr. Bhatt fairly points out that the controversy raised herein is concluded in favour of the assessee by the decision dated 11-7-2000 of this Court in I.T.R. No.318 of 1984 (CIT vs. Kaira Dist. Co.Op. Milk Producers' Union Ltd.).

In view of the above decision, we answer question No.2 also in the negative i.e. in favour of the assessee and against the revenue.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

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